

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE:

FRED DALE VAN WINKLE,

Debtor.

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)
)

No. 13-11743-j7

REPLY TO DEBTOR'S MOTION TO AVOID JUDICIAL LIEN

Martin, Dugan & Martin

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COME NOW Belleview Valley Land Co., Inc., John H. Williams and Ellen B. Williams (*hereinafter jointly referred to as "Williams"*) by and through their attorney, W. T. Martin, Jr., of Martin, Dugan & Martin, and for their *Reply to Debtor's Motion to Avoid Judicial Lien* filed by the Debtor, Fred Van Winkle (*hereinafter referred to as "Debtor"*) state:

1. On August 13, 2010, the Otero County District Court, in Otero County Cause Number CV-2008-76-Div. II, entered a Final Judgment in Williams's favor and against the Debtor, Fred Dale Van Winkle (*hereinafter referred to as "Fred"*). The Final Judgment resulted from Van Winkle's violation of the New Mexico County Subdivision Act and the Otero County Subdivision Ordinance.
2. On August 17, 2010, Williams recorded a *Transcript of Judgment* reflecting the judgment with the County Clerk of Lincoln County, New Mexico. (*A copy of the Transcript of Judgment is attached as Exhibit "A" and is incorporated herein as if fully set forth.*)
 - a. The filing of the *Transcript of Judgment* created a judicial lien against any real property in which Fred owned an interest in Lincoln County, New Mexico.
3. More than one year passed between the filing of the *Transcript of Judgment* and the Debtor's filing of the Chapter 7 Petition in this Bankruptcy proceeding.
4. Valid perfected judicial liens, which precede bankruptcy, survive and are enforceable after bankruptcy. (*See, 11 U.S.C. §§ 506(d) and 522(c)(2)*). The bankruptcy discharge does not prevent post-petition enforcement of valid liens. The secured creditor may proceed to enforce the lien, as an *in rem* action, and is not barred by the injunctive terms of 11 U.S.C. § 524. *Chandler Bank of Lyons v. Ray*, 804 F.2d 577 (10th Cir.1986). Williams's judicial lien is secured to the value of the Lincoln County property and can *only* be

avoided pursuant to **11 U.S.C. §522(f)** to the extent that it impairs an exemption to which the debtor would have been entitled and no more. **In re Hermanson, 84 B.R. 729 (Bankr. D. Colo. 1988).**

5. The Williams' judgment lien is only avoidable for \$60,000.00, which is the homestead exemption under New Mexico law, **§42-10-9 N.M.S.A. 1978 Comp.** The remaining equity in the home is available to lien holders for purposes of satisfying amounts owed on liens, including Williams's judgment lien.

Martin, Dugan & Martin



By _____
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Attorney for Williams

Martin, Dugan & Martin certifies that the foregoing Response was electronically filed with the Court via the CM/ECF system. All attorneys and parties identified with the Court for electronic service on the record in this case were served by electronic service in accordance with the CM/ECF system on the 8th day of October 2013.



W. T. Martin, Jr.

**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

FILED
DISTRICT COURT OF
OTERO COUNTY, N.M.
2010 AUG 17 PM 1:25
JAN PERRY

TRANSCRIPT OF JUDGMENT

CLERK _____ BY _____

CASE NUMBER: CV-2008-76 DIV. II

NATURE OF ACTION: Counterclaim for Violation of Subdivision Act

JUDGMENT CREDITORS: Belleview Valley Land Co., John Williams and Ellen Bl. Williams

JUDGMENT DEBTOR: FRED VAN WINKLE

AMOUNT OF JUDGMENT

DAMAGES	COSTS	TOTAL	RATE OF INTEREST
\$234,944.31 plus Attorney Fees to be determined by the Court.	\$640.99	\$235,585.30 + costs plus Attorney Fees to be determined by the Court.	8.75% per annum calculated from July 23, 2010.

DATE OF JUDGMENT:

HOW SATISFIED & REMARKS

August 13, 2010	
ATTORNEY FOR JUDGMENT CREDITOR:	
W. T. Martin, Jr. Martin, Dugan & Martin 509 W. Pierce St. P.O. Box 2168 Carlsbad, NM 88221-2168 (575) 887-3528 Fax (575) 887-2136	

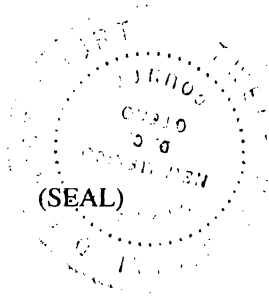
LINCOLN COUNTY-NM
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EXHIBIT


A

I, Jan Perry, Clerk of the District Court of the Twelfth Judicial District of the State of New Mexico, within and for the County of Otero, do hereby certify the foregoing to be a true transcript of the judgment of said Court, now of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and Seal of said Court this 17 day of August, 2010.



JAN PERRY
CLERK OF THE DISTRICT COURT

By: 
Deputy

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